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CITY AND COUNTY OF SAN FRANCISCO
(Including SAN FRANCISCO DEPARTMENT OF BUILDING
INSPECTION, SAN FRANCISCO BUILDING
INSPECTION COMMISSION, and
SAN FRANCISCO PLANNING DEPARTMENT)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

REGAN CARROLL TRUST, Regan
Carroll, Trustee,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, SAN FRANCISCO
DEPARTMENT OF BUILDING
INSPECTION, SAN FRANCISCO
BUILDING INSPECTION
COMMISSION, and SAN FRANCISCO
PLANNING DEPARTMENT,

Defendants.

Case No. C-07-2577 SBA

**CITY'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF MOTION
TO DISMISS FIRST AMENDED
COMPLAINT FOR LACK OF
JURISDICTION AND FAILURE TO
STATE A CLAIM, TO STRIKE THIRD
COUNT OR, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT
[FRCP 12(B)(1); 12(B)(6); 12(F); 56]**

Hearing Date: February 5, 2008
Time: 1:00 p.m.
Place: Courtroom 3, 3rd Floor

Trial Date: TBA

1 Defendant City and County of San Francisco (sued herein as the City and County of San
2 Francisco, San Francisco Department of Building Inspection, San Francisco Building Inspection
3 Commission, and San Francisco Planning Department; collectively "City"), by and through its
4 counsel of record, hereby requests that this Court take judicial notice pursuant to Federal Rule of
5 Evidence 201 of the following facts and documents:

6 1. The contents Section 1005 of the San Francisco Planning Code, a copy of which is
7 attached as Exhibit 1 hereto.

8 2. The contents Section 1006 of the San Francisco Planning Code, a copy of which is
9 attached as Exhibit 2 hereto.

10 3. The contents Section 1006.2 of the San Francisco Planning Code, a copy of which is
11 attached as Exhibit 3 hereto.

12 4. On September 12, 2006, Plaintiff filed an Amended Petition for Writ of Mandate
13 (C.C.P. § 1085) and Writ of Administrative Mandamus (C.C.P. §1094.5) ("Amended Petition") in
14 San Francisco Superior Court Case No. CPF-06-506542. That Amended Petition was served on the
15 City by summons dated September 27, 2006. A copy of the Amended Petition and summons is
16 attached as Exhibit 4 hereto.

17 a. On January 5, 2006, the Acting Director of the City and County of San
18 Francisco Department of Building Inspection sent a letter to Plaintiff's counsel notifying counsel that
19 the Department of Planning had reasserted jurisdiction over the building permit application that is the
20 subject of this action. That notice is attached as Exhibit A to the Amended Petition.

21 b. On May 8, 2006, the Building Inspection Commission ("BIC") issued findings
22 adopted on May 1, 2006 at a regular meeting of the BIC denying Plaintiff's Appeal of the January 5,
23 2006 determination by the Acting Director. Those findings are attached as Exhibit B to the Amended
24 Petition.

25 c. By letter dated March 6, 2006, the City's Zoning Administrator notified
26 Plaintiff that the Planning Department requested that all building permit applications, renewals,
27 extensions, addendums or revisions for Plaintiff's property be submitted to the Planning Department
28 for review. ("ZA Determination.") The ZA Determination notified Plaintiff, among other things, that

1 the Planning Code was significantly amended during the pendency of Plaintiff's permit application,
2 and that the application was subject to review for consistency with the amended Planning Code. A
3 copy of the ZA Determination is attached as Exhibit C to the Amended Petition.

4 d. On June 16, 2007, the Board of Appeals ("BOA") issued its notice of decision
5 and order denying Plaintiff's appeal of the ZA Determination. A copy of the notice of decision is
6 attached as Exhibit D to the Amended Petition.

7 5. On November 27, 2006, Plaintiff filed a Petition for Writ of Mandate and Complaint
8 for Declaratory Relief in San Francisco Superior Court Case No. CPF-06-506816 ("Petition"). That
9 Petition was served on the City by summons dated November 27, 2006. Copies of the Petition and
10 Summons are attached as Exhibit 5 hereto.

11 6. On May 21, 2007, Plaintiff filed a Complaint for Injunction and Declaratory Relief in
12 San Francisco Superior Court Case No. CPF-07-463565 ("Complaint"). Plaintiff served the
13 Complaint on the City by summons dated May 21, 2007. Copies of the Complaint and Summons are
14 attached as Exhibit 6 hereto.

15 7. On June 5, 2007, Plaintiff filed a Petition for Writ of Administrative Mandate in San
16 Francisco Superior Court Case No. CPF-07-507293. A copy of the Petition is attached as Exhibit 7
17 hereto.

18 8. On May 9, 2007, the City filed its demurrer and supporting papers in San Francisco
19 Superior Court Case No. CPF-06-506542. A copy of the City's moving papers is attached as Exhibit
20 8 hereto.

21 9. On July 3, 2007, the City filed its reply brief in support of demurrer in San Francisco
22 Superior Court Case No. CPF-06-506542. A copy of the City's reply brief is attached as Exhibit 9
23 hereto.

24 10. On July 5, 2007, Plaintiff's counsel filed a request for dismissal of San Francisco
25 Superior Court Case No. CPF-06-506542. A copy of the request for dismissal is attached as Exhibit
26 10 hereto.

27 11. The contents of Section 106.4.3 of the San Francisco Building Code, a copy of which
28 is attached as Exhibit 11 hereto.

1 12. On April 4, 2007, in connection with Appeal No. 06-200, the BOA heard a request for
2 rehearing by Plaintiff of the BOA's March 7, 2007 decision upholding the denial of Plaintiff's
3 building permit. At the request of Plaintiff's counsel, the matter was continued for one year to April
4 2, 2008, and no final decision on the building permit application was made. A copy of the BOA
5 docket for appeal No. 06-200 reflecting the one year continuance is attached as Exhibit 12 hereto.

6 13. Attached as Exhibit 13 hereto are true and correct copies of records printed from the
7 San Francisco Department of Building Inspection reflecting actions taken by the City in connection
8 with the building permit application at issue in this case. Those records reflect the following:

9 a. Building Permit Application No. 9902819 was disapproved on December 8,
10 2006.

11 b. As of November 16, 2007, the Building and Planning Departments have not
12 received an application for certificate of appropriateness in connection with Application No.
13 9902819.

14 c. All permit applications associated with Plaintiff's property located at 1169
15 Tennessee (adjacent to the subject property) have expired or been issued. These records reflect no
16 pending permit applications for 1169 Tennessee Street.

17 14. On or about December 8, 2006, the City sent a letter to counsel for Plaintiff notifying
18 him that his application was "Not ...Approved" by the City's Planning Department. Thereafter, by
19 letter dated December 20, 2006, the City received a request from Plaintiff's former counsel that the
20 City deny Application No. 9902819. True and correct copies of those letters are attached as Exhibit
21 14 hereto.

1 Dated: December 14, 2007

2 DENNIS J. HERRERA
3 City Attorney
4 KRISTEN A. JENSEN
5 THOMAS S. LAKRITZ
6 CHRISTINE VAN AKEN
7 Deputy City Attorneys

8 By: 
9 KRISTEN A. JENSEN

10 Attorneys for Defendant
11 CITY AND COUNTY OF SAN FRANCISCO
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